IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
O'CONNELL, P.J., AND BANDSTRA AND MARKEY, JJ

ATTORNEY GENERAL BILL SCHUETTE PUBLIC OFFICER-SUCCESSOR IN INTEREST, on behalf of the PEOPLE OF THE STATE OF MICHIGAN,	Supreme Court No. 142670
Plaintiff-Appellant,	Court of Appeals No. 290167
v	Ingham County Circuit Court Case No. 08-917-CZ
BLUE CROSS BLUE SHIELD OF MICHIGAN,	
Defendant-Appellee. /	
ATTORNEY GENERAL BILL SCHUETTE PUBLIC OFFICER-SUCCESSOR IN INTEREST, on behalf of the PEOPLE OF THE STATE OF MICHIGAN,	Supreme Court No. 142671
Plaintiff-Appellant,	Court of Appeals No. 295750
v	Ingham County Circuit Court Case No. 09-952-CZ
BLUE CROSS BLUE SHIELD OF MICHIGAN,	
Defendant-Appellee.	

and

OFFICE OF FINANCIAL AND INSURANCE REGULATION,

Respondent-Appellee

and

COMMISSIONER OF THE OFFICE OF FINANCIAL AND INSURANCE REGULATION

Respondent.

/

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THE COALITION FOR A FAIR & COMPETITIVE INSURANCE MARKET'S AMICUS BRIEF IN SUPPORT OF REVERSING THE COURT OF APPEALS AND THE TRIAL COURT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

RULES

STATUTES

OTHER AUTHORITIES

STATEMENT OF THE BASIS OF JURISDICTION AND AUTHORITY FOR FILING AMICUS BRIEF

On July 13, 2011, this Court granted the Attorney General's application for leave to appeal. (Plaintiff's Appx, 132a.) This Court, therefore, has jurisdiction under MCR 7.301(A)(2). This Court previously accepted the Coalition for a Fair & Competitive Insurance Market's (the "Coalition") Amicus brief addressing whether the Court should grant leave in this case. The Coalition now respectfully requests that this Court accept the Coalition's Amicus brief on the merits pursuant to MCR 7.306(D) and MCR 7.313.

QUESTION PRESENTED

I. DID BLUE CROSS BLUE SHIELD OF MICHIGAN ("BCBSM") VIOLATE THE NONPROFIT HEALTH CARE CORPORATION REFORM ACT WHEN ITS WHOLLY-OWNED SUBSIDIARY PURCHASED THREE WORKERS' COMPENSATION COMPANIES AND, IN AT LEAST ONE INSTANCE, BCBSM APPROVED AND FUNDED THE PURCHASE OF A FOREIGN WORKERS' COMPENSATION COMPANY?

The Attorney General says "yes."

Blue Cross Blue Shield of Michigan says "no."

The Circuit Court would say "no."

The Court of Appeals said "no."

Amicus Curiae Coalition for a Fair & Competitive Insurance Market says "yes."

INTRODUCTION AND STATEMENT OF THE COALITION'S INTEREST

A. Introduction.

At issue in this case is whether BCBSM, a non-profit healthcare company granted special privileges by the Legislature, may use a wholly-owned subsidiary as a subterfuge to acquire and control three foreign workers' compensation insurance companies. The Nonprofit Health Care Corporation Reform Act, 1980 PA 350, MCL 550.1101 *et seq.* ("PA 350"), which governs BCBSM's actions, unequivocally prohibits BCBSM from acquiring in any manner foreign for-profit insurance companies if such an acquisition results in BCBSM "directly" or even "indirectly" controlling 10% or more of the voting securities of a foreign for-profit insurance company. MCL 550.1207(1)(o)(iii); MCL 500.115(b). Despite this prohibition, BCBSM directed the Accident Fund Insurance Company of America (the "Accident Fund"), a wholly-owned subsidiary of BCBSM, to acquire CompWest Insurance Company ("CWI"), a foreign workers' compensation insurer, and then funded the acquisition. During the same time period, BCBSM also used the Accident Fund to acquire control over two additional foreign workers' compensation insurers: United Wisconsin Insurance Company ("United Wisconsin") and Third Coast Insurance Company ("Third Coast").

Despite directing and funding the acquisitions of foreign insurance companies, BCBSM claims that it did not violate PA 350 because it was the Accident Fund, not BCBSM, that acquired and now controls the companies. The Court of Appeals agreed with this argument. Concluding that BCBSM did not violate PA 350 when it commanded its wholly-owned subsidiary to purchase foreign insurance companies not only defies common sense, it also ignores PA 350's plain language. Stated simply, BCBSM controls all three foreign insurance companies—it owns 100% of the Accident Fund's voting securities, and the Accident Fund owns 100% of all three companies' voting securities. As is clear from PA 350's plain language, such control is not what the Legislature intended, nor is it what the insurance industry believed possible, when the Legislature granted BCBSM the authority to purchase the Accident Fund from the State of Michigan.

B. Statement of interest.

The relevant statutory language central to this dispute first originated in 1993. Although opposed by a wide number of insurance companies operating in Michigan, it was in that year that the Legislature amended PA 350 to allow BCBSM to acquire the Accident Fund. While considering the legislation that would permit the acquisition, BCBSM represented that it would treat the acquisition of the Accident Fund like any other investment made by a corporation:

> Basically we look at this as an investment just like we invest in paper at General Motors, U.S. Government Bonds, etc., this would be an investment, the earnings of which would inure to the policyholders of Blue Cross Blue Shield of Michigan and as it does not, it goes into the rate base. So, we see this as a sound investment and any income we would make would go back to the parent.[1]

Recognizing that a non-profit, tax-exempt entity would have a competitive advantage were it allowed to own and control for-profit insurers, however, the Legislature placed significant statutory restrictions on BCBSM's control and operation of the Accident Fund.

Despite those restrictions, BCBSM's acquisition of the Accident Fund has been anything but the typical investment. Unlike an "invest[ment] in paper at General Motors," or in "U.S. Government Bonds," BCBSM is attempting to avoid the clear statutory restraints mandated by the Legislature by using its "investment" as a vehicle to gobble-up for-profit casualty insurance companies while it continues to operate as a non-profit, tax-exempt entity. Most recently,

[1] May 11, 1993 Statement of Bob Naftaly, then-Executive Vice President of Administrative Services, Chief Financial Officer, and Treasurer of BCBSM, to the Senate Commerce Committee, when asked about the diversion of health care premium dollars if the Legislature allowed BCBSM to purchase the Accident Fund.

BCBSM, acting as the parent corporation with full control over the Accident Fund, directed the Accident Fund to purchase CWI, United Wisconsin, and Third Coast. In one instance, BCBSM made a capital contribution of subscriber funds—funds earned on a tax-exempt basis—to the Accident Fund, so that the Accident Fund could acquire the insurer. As a result of these transactions, BCBSM now serves as a tax-exempt "benevolent" company that also just happens to be a holding company for a growing empire of for-profit insurance companies.

The Coalition represents several domestic and foreign insurance companies that pay Michigan taxes and employ thousands of Michigan residents. Based on its participation in Michigan's insurance market, including ongoing participation in legislation amending PA 350 since 1980, the Coalition respectfully submits this brief amicus curiae asking this Court to reverse the Court of Appeals. The Coalition urges this honorable Court to find that PA 350 clearly and unequivocally prevents BCBSM from using the Accident Fund to purchase and control the insurance companies at issue. Disregarding PA 350's clear prohibition on BCBSM's control over for-profit insurers will drastically change the entire landscape of Michigan's insurance market by allowing a non-profit entity that enjoys the benefits of not paying taxes to artificially transform the market. Such a result will negatively affect the entire industry, and may eventually increase insurance rates for everyone participating in Michigan's insurance market.

STATEMENT OF MATERIAL FACTS AND PROCEDURAL HISTORY

I. PROCEDURAL HISTORY.

The Coalition previously filed an Amicus brief in this docket supporting leave to appeal. In the interests of judicial economy, the Coalition will not again restate the procedural history. Most important for the Court's consideration of this appeal is the Court of Appeal's holding that PA 350 does not prohibit the transactions at issue:

> There is no dispute that BCBSM, as a 'health care corporation,' was plainly prohibited by MCL 550.1207(1)(o) from directly acquiring UWI, CWI, and Third Coast. And there is no allegation that it did so. The question presented is whether MCL 550.1207(1)(o) has any application to the acquisition of these insurers by BCBSM's wholly-owned subsidiary, the Accident Fund. We agree with the trial court's conclusion that it does not.

Atty Gen v Blue Cross Blue Shield of Mich, 291 Mich App 64, --- NW2d ---; 2010 WL 4963015, *6 (2010). The Court of Appeals concluded that Section 207(1) of PA 350 had "no direct application to the Accident Fund's business activities," and that nothing "expressly prohibits any particular activity undertaken by a health care corporation's subsidiary." *Id.* The Court of Appeals held that BCBSM did not "otherwise" acquire an interest in the three insurance companies because, "BCBSM did not itself 'invest [in]...purchase, take, receive, subscribe for,...acquire, own, hold, vote, [or] employ' any interest whatsoever in the three insurance companies purchased by the Accident Fund in any manner whatsoever." *Id.* at *7.

Finally, the Court of Appeals cited to the July 23, 2003 changes to PA 350 that removed language relating to a health care corporation indirectly engaging in investment activity and replacing it with the language relevant to this appeal, which prevents a health care corporation from "otherwise acquiring" an interest that results in the corporation controlling a particular insurer. *Id.* at *7-8. The Court of Appeals concluded that these changes meant that PA 350 "is violated only when [BCBSM] undertakes a financial transaction that results in it having control of the acquired insurer." *Id.* at *8. The Court held that BCBSM did not violate PA 350, because "BCBSM did not itself acquire any interest in or control of the three insurers at issue." *Id.*

II. MATERIAL FACTS.

The Coalition's Amicus brief supporting leave to appeal in this case provides a detailed explanation of BCBSM's history as a health care corporation under PA 350 and the legislation granting BCBSM authority to purchase the Accident Fund. In the interests of judicial economy, the Coalition will not restate that history here. It is important, however, to describe briefly the transactions at issue in this case:

- On December 28, 2005, the Accident Fund acquired 100% of the outstanding common shares of United Wisconsin for $98,000,000. (Plaintiff's Appx, 16a, ¶ 16.) United Wisconsin provides workers-compensation insurance coverage and services compensation pools for employers located primarily in the Midwest. (*Id.*)

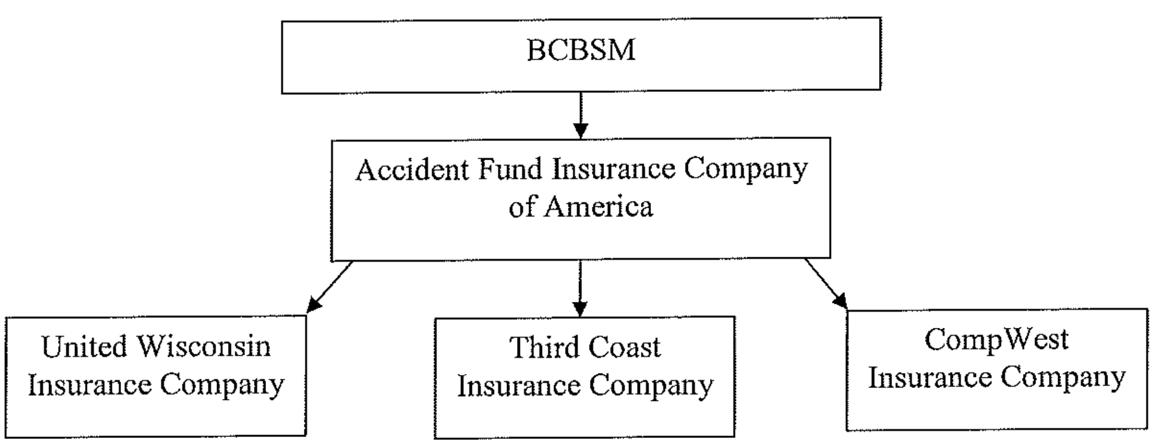
- On August 4, 2007, **BCBSM's Board of Directors voted to approve the Accident Fund's acquisition** of all capital stock of CWI, a Delaware insurance holding company that owns 100% of the shares of CompWest Insurance Company—a California property and casualty insurance company that writes workers-compensation insurance primarily in California. (Plaintiff's Appx, 16a, ¶¶ 18, 19.) On the same day, BCBSM's directors voted to make a "capital contribution" to the Accident Fund in an amount high enough to ensure that both CWI Holdings and CompWest Insurance Company were able to maintain an "A" insurance rating. (*Id.*)

- On August 31, 2007, the Accident Fund acquired 100% of the outstanding common shares of Third Coast, an inactive Illinois property and casualty insurance company for a price of $11,900,000. (Plaintiff's Appx, 16a, ¶ 17.)

- On November 13, 2007, **BCBSM transferred $125,000,000 in cash to the Accident Fund**. (Plaintiff's Appx, 17a, ¶ 20.)

- One week after the $125,000,000 cash transfer from BCBSM to the Accident Fund, on November 20, 2007, pursuant to the approval of BCBSM's Board of Directors, the Accident Fund purchased 100% of the outstanding shares of CWI for $127,400,000. (App 17a, ¶ 18.)

These transactions are illustrated by the organizational chart below where each down arrow represents 100% ownership of voting securities:



In fact, BCBSM's organizational chart filed with the Office of Financial and Insurance Regulation, attached to this Brief as Exhibit A, confirms this point, and admits that BCBSM ultimately controls United Wisconsin, Third Coast, and CWI.[2] With the above facts in mind, it must be determined whether BCBSM "otherwise acquired" shares, securities, or interests of foreign insurers resulting in BCBSM controlling 10% or more of those insurers. There is no question that BCBSM made such acquisitions.

ARGUMENT

I. STANDARD OF REVIEW.

The Coalition adopts by reference the Attorney General's statement of the Standard of Review, which is *de novo*. *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006). Furthermore, because this case involves an order granting BCBSM's motion to dismiss under MCR 2.116(c)(8), "all factual allegations contained in the complaint must be accepted as true." *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995).

II. BCBSM VIOLATED SECTION 207 OF PA 350 BY USING THE ACCIDENT FUND AS A SUBTERFUGE TO ACQUIRE THREE FOREIGN WORKERS' COMPENSATION INSURANCE COMPANIES.

A. PA 350 restricts BCBSM from investing in, controlling, or owning foreign workers' compensation insurers.

PA 350 both grants and limits BCBSM's powers. As a health care corporation regulated under PA 350, BCBSM may only "transact business, receive, collect, and disburse money, and acquire, hold, protect, and convey property, that is properly within the scope of purposes" set forth in PA 350, and only "for the benefit of the subscribers of the corporation as a whole."

[2] The Coalition recognizes that Exhibit A is not part of the appellate record. But this chart, which is in the public record and admits that BCBSM ultimately controls all three foreign insurance companies, demonstrates the invalidity of BCBSM's arguments in this case. It also reveals the invalidity of dismissing this case based on BCBSM's motion for summary disposition. Other documents undoubtedly exist showing the fallacy of BCBSM's claims in this case.

MCL 550.1206. Section 202 of PA 350 sets forth BCBSM's purposes and generally allows BCBSM to provide health care benefits, provide an opportunity for all individuals to have access to health care coverage, and ensure reasonable prices. *See* MCL 550.1202(1)(d).

While Section 202 of PA 350 sets forth BCBSM's purposes, Section 207 enumerates BCBSM's powers and confines BCBSM's activities to those powers described in Section 207. *See* MCL 550.1207. Importantly, PA 350 significantly limits BCBSM's ability to invest in other insurers. *See* MCL 550.1207. Based on changes in the insurance market and specific circumstances affecting BCBSM, the Legislature has amended these provisions on several occasions. Those amendments, which attempt to keep health care premiums low and ensure fair competition for BCBSM's commercial insurance competitors, are central to this appeal.

Currently, Section 207(1)(o) allows BCBSM to invest in insurance companies **only if such investments do not result in BCBSM owning or controlling an insurer that was authorized to sell more than disability insurance**:

> (1) A health care corporation, subject to any limitation provided in this act, in any other statute of this state, or in its articles of incorporation, may do any or all of the following:
>
> * * *
>
> (o) Subject to chapter 9 of the insurance code of 1956, 1956 PA 218, MCL 500.901 to 500.947, invest and reinvest its funds and, for investment purposes only, purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use, and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by entities other than domestic, foreign, or alien insurers, as defined in sections 106 and 110 of the insurance code of 1956, 1956 PA 218, MCL 500.106 and 500.110, whether engaged in a similar or different business, or governmental or other activity, including banking corporations or trust companies. However, *a health care corporation may purchase, take, receive, subscribe for, or otherwise acquire,* own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of bonds or other obligations, shares, or other

securities or interests issued by a domestic, foreign, or alien insurer, so long as the activity meets all of the following:

(i) Is determined by the attorney general to be lawful under section 202.

(ii) Is approved in writing by the commissioner as being in the best interests of the health care corporation and its subscribers.

(iii) For an activity that occurred before the effective date of the amendatory act that added subparagraph (iv), *will not result in the health care corporation owning or controlling 10% or more of the voting securities of the insurer or will not otherwise result in the health care corporation having control of the insurer, either before or after the effective date of the amendatory act that added subparagraph (iv). As used in this subparagraph and subparagraph (iv), "control" means that term as defined in section 115 of the insurance code of 1956, 1956 PA 218, MCL 500.115.*

(iv) *Subject to section 218 and beginning on the effective date of the amendatory act that added this subparagraph, will not result in the health care corporation owning or controlling part or all of the insurer unless the transaction satisfies chapter 13 of the insurance code of 1956, 1956 PA 218, MCL 500.1301 to 500.1379, and the insurer being acquired is only authorized to sell disability insurance as defined under section 606 of the insurance code of 1956, 1956 PA 218, MCL 500.606, or under a statute or regulation in the insurer's domiciliary jurisdiction that is substantially similar to section 606 of the insurance code of 1956, 1956 PA 218, MCL 500.606.*

MCL 550.1207(1)(o) (emphasis added). Although this is a lengthy statute, its prohibition is simple: BCBSM may not invest in, own, or control insurers authorized to write lines other than disability insurance.

B. <u>BCBSM otherwise acquired and now indirectly controls three non-disability foreign insurers.</u>

The Court of Appeals found that BCBSM did not violate Section 207, because Section 207 has no direct application to the Accident Fund's business activities. *Atty Gen, supra* at *6. In reaching its holding, the Court of Appeals reasoned that Section 207(1)(o) applies only to BCBSM, not to the Accident Fund. *Id.* The Court opined that Section 207 had no "application to the acquisition [of the three insurance companies] by BCBSM's wholly-owned subsidiary." *Id.* BCBSM now trumpets this same argument—noting that PA 350 applies only to "a *health care corporation*," and that the "Accident Fund is *not* a health care corporation." (BCBSM Brief, p 13) (emphasis in original). BCBSM claims that, in order to prevent the transactions at issue, Section 207 would need to prevent a BCBSM's "affiliates" or "subsidiaries" from purchasing, acquiring, or owning shares issued by a foreign insurer. (*Id.* at p 14). The Court of Appeals' conclusions and BCBSM's arguments, however, completely ignore Section 207's plain language, thereby avoiding the issues of whether BCBSM "otherwise" acquired shares of the three insurance companies, and whether those acquisitions led to BCBSM's "control" of the companies.

i. BCBSM "otherwise acquired" foreign insurers when its wholly-owned subsidiary acquired three foreign insurance companies.

BCBSM is a "creature" of PA 350. *Cowan v Blue Cross & Blue Shield of Mich*, 166 Mich App 568, 570; 421 NW2d 243 (1988). As a creature of statute, BCBSM exists at the Legislature's will and must abide by the parameters expressed by the Legislature. This is critical because Section 207(1)(o)'s plain language provides that BCBSM cannot "purchase, take, receive, subscribe for, **or otherwise acquire**...bonds or other obligations, shares, or other securities or interests issued by a domestic, foreign, or alien insurer," if such acquisition leads to controlling a non-disability insurer. MCL 550.1207(1)(o) (emphasis added). BCBSM essentially ignores the word "otherwise" in this statutory list—using ellipsis to take out the word "otherwise" on page 14 of its Brief, and then never addressing the language head on in its arguments, instead deciding to briefly mention the issue in a footnote on page 17 that never even discusses why BCBSM did not "otherwise acquire" an interest in any of the insurance companies at issue. In fact, BCBSM goes as far as contending that Section 207(1)(o) becomes relevant "*if* *and only if the health care corporation (BCBSM) has actual stock ownership of an insurer.*" (BCBSM Brief, p 18) (emphasis in original). BCBSM claims "[b]ecause BCBSM did not directly acquire" the foreign insurers, "neither Section 207 nor any of its component subsections...are implicated." (*Id.* at p 20.) BCBSM's arguments are wrong—the arguments completely ignore Section 207(1)(o)'s plain language, which is the only relevant indicator of what BCBSM may or may not do under PA 350.

As with any case involving a dispute over the proper interpretation of a statute, the correct resolution of this dispute requires the application of the rules of statutory construction. The best and most powerful indicator of legislative intent is the statute's language. *Apsey v Memorial Hosp*, 477 Mich 120, 127; 730 NW2d 695 (2007). When statutory language is clear, a court cannot read anything into the statute, because "the Legislature is presumed to have intended the meaning expressed." *Id.* Furthermore, in Michigan, statutory "exceptions are strictly construed." *People v Brooks*, 184 Mich App 793, 797; 459 NW2d 313 (1990), citing *Grand Rapids Motor Coach Co v Mich Pub Serv Comm'n*, 323 Mich 624; 36 NW2d 299 (1949). Finally, a court must avoid construing a statute in a manner that would render the statute nugatory. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Concluding that BCBSM did not "otherwise acquire" the three foreign insurance companies violates each of these statutory construction tenets.

As noted, BCBSM contends that it must "directly acquire" a foreign insurer in order to trigger Section 207(1)(o). That argument, however, ignores the phrase "otherwise acquire," which is included at the end of Section 207(1)(o)'s list addressing several different ways in which BCBSM might acquire an interest in a foreign insurer. This phrase must have some meaning. The dictionary defines "otherwise," as an adverb meaning "in another manner;

differently." *Webster's New College Dictionary,* 1021 (2007). And adverbs modify verbs. *Great Wolf Lodge v Public Serv Comm'n,* 489 Mich 27, 45; 799 NW2d 155 (2011). Thus, the word "otherwise" modifies the list of methods for acquiring an interest, so that acquisitions may occur in manners *different* from a purchase, taking, receiving, or subscription. Clearly then, a direct purchase by BCBSM is **not** necessary to trigger Section 207(1)(o). Instead, anything that results in BCBSM acquiring an interest in a foreign insurer satisfies Section 207(1)(o)'s plain language. Any argument to the contrary must be rejected—if BCBSM were required to directly purchase an interest in an insurer in order to trigger Section 207(1)(o)'s prohibitions, there would be no reason to include the phrase "otherwise acquire" in Section 207(1)(o). Direct purchases would be covered by the terms "purchase, take, receive, [and] subscribe for." It cannot be presumed "that the Legislature intended to do a useless thing." *Southfield Western, Inc v Southfield,* 206 Mich App 334, 338; 520 NW2d 721 (1994), *citing Girard v Wagenmaker,* 437 Mich 231, 244; 470 NW2d 372 (1991). But under BCBSM's reasoning and the Court of Appeals' decision, it was useless for the Legislature to insert the phrase "otherwise acquire" into Section 207(1)(o). Such reasoning cannot stand.

Having dispelled BCBSM's argument that a "direct" acquisition by BCBSM is necessary to implicate Section 207(1)(o), it is clear that the transactions at issue in this appeal violate PA 350. When BCBSM's wholly-owned subsidiary purchased 100% of each of the foreign insurers' securities, BCBSM clearly "otherwise acquired" those insurers. As the organizational chart provided in this brief illustrates, there is no denying that, by owning 100% of the Accident Fund, BCBSM has "otherwise acquired" United Wisconsin, Third Coast, and CWI. In fact, the trial court recognized that, when the Accident Fund acquired the insurance companies, BCBSM "indirectly owns" and "*indirectly purchased or acquired* the companies." (January Order of the

Trial Court, p 4 (emphasis added)). This is clearly a form of "otherwise acquiring" an interest in an insurance company. This is **especially** true in the case of CWI, where, just a few days before the Accident Fund acquired CWI, BCBSM's board of directors gave the Accident Fund $125,000,000 and "approved" the Accident Fund's acquisition of CWI. (Plaintiff's Appx, 17a, ¶¶ 18-20). Tellingly, BCBSM has **never** provided an explanation for why BCBSM approved and funded the Accident Fund's acquisition of CWI. This is probably because it is impossible to explain BCBSM's actions and still maintain that BCBSM did not "otherwise acquire" CWI—if approving and paying for a corporate acquisition by a wholly-owned subsidiary does not constitute "otherwise acquiring" an interest in a corporation, it is difficult to imagine any transaction that would constitute "otherwise" acquiring an interest.

BCBSM's arguments and the Court of Appeals decision in this case also ignore the concept that exceptions to statutory prohibitions should be narrowly construed. *Brooks*, 184 Mich App at 797. Here, the general rule is that BCBSM cannot "otherwise acquire" foreign insurance companies unless the acquisition satisfies certain statutory criteria. But BCBSM now asks this Court to swallow this general rule. The Court of Appeals decision allows BCBSM to entirely circumvent Section 207(1)(o)'s provisions by merely directing the Accident Fund to make acquisitions and funneling cash to the Accident Fund to pay for the acquisitions. Stated simply, the Court of Appeals' decision allows BCBSM to use the Accident Fund as a vehicle to escape PA 350's application. Permitting this subterfuge renders Section 207(1)(o) completely meaningless. Obviously, such an interpretation cannot stand.

In short, nothing in the Court of Appeals' decision or in BCBSM's arguments to this Court give any meaning to the phrase "otherwise acquire." Under this Court's precedent, however, every statutory phrase **must** have some meaning. At a minimum, where a company gives its subsidiary $125 million and "approves" that subsidiary's acquisition of another company with that money, the parent corporation has "otherwise acquired" an interest in the purchased company. The Court of Appeals was in error, therefore, when it concluded that BCBSM did not "otherwise acquire" the three insurance companies. This Court should enforce and give meaning to Section 207(1)(o)'s plain language, and reverse the Court of Appeals.

ii. BCBSM now controls all three insurance companies.

Section 207 only prevents BCBSM from "otherwise acquiring" an interest in non-disability insurers if such acquisition leads to the "control" of those insurers. The Court of Appeals never formally addressed this issue because it concluded that BCBSM did not "otherwise acquire" the three insurance companies. And BCBSM argues that there is no "control" of foreign insurers by BCBSM because BCBSM does not directly own any of the insurers. In fact, BCBSM contends that it is not "prohibited from controlling a foreign insurer *unless* BCBSM first purchases/owns the shares of that foreign insurer." (BCBSM Brief, p 20) (emphasis in original). BCBSM is wrong. A review of PA 350's application to the facts reveals that BCBSM controls all three companies.

First, it must be reiterated that BCBSM's "direct purchase and/or own" argument simply has no support. As explained above, Section 207(1)(o) applies when BCBSM "otherwise acquires" an interest in a foreign insurer. Here, in at least one instance (and probably all three instances), BCBSM's Board of Directors **voted to approve the Accident Fund's acquisition of CWI and then gave the Accident Fund the cash to make the purchase.** It is impossible to imagine how BCBSM did not "otherwise acquire" CWI under these circumstances.

Having established that Section 207(1)(o)'s "control" provisions are relevant, it is next appropriate to analyze whether BCBSM exercises "control" over the foreign insurers. For purposes of Section 207(1)(o)(iv), "control" means "that term as defined in Section 115 of the insurance code... ." MCL 550.1207(1)(o)(iii). When a statute "specifically defines a given term, that definition *alone* controls." *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007) (emphasis added), (citing *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996)). For this reason, "[w]hen a statute sets forth its own definitions of certain terms, those terms must be applied as defined." *Id.* Section 115 of the Insurance Code defines control to include any situation where an entity may control, **directly or indirectly**, either the management or policies of another entity:

> 'Control' including the terms 'controlling', 'controlled by', and 'under common control with' mean the following: . . . the possession or the contingent or noncontingent right to acquire possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether *through the ownership of voting securities*, by contract including acquisition of assets or bulk reinsurance, other than a commercial contract for goods or nonmanagement services, by pledge of securities, *or otherwise*, . . . Control is presumed to exist if any person, by formal or informal arrangement, device, or understanding, *directly or indirectly, owns, controls, holds with the power to vote*, or holds proxies representing *10% or more of the voting securities of any other person* or for a mutual insurer owns 10% or more of the insurer's surplus through surplus notes, guarantee fund certificates or other evidence of indebtedness issued by the insurer.

MCL 500.115(b) (emphasis added). Thus, the next relevant question in determining whether BCBSM violated Section 207(1)(o) is whether the Accident Fund's acquisition of the three workers' compensation insurers resulted in BCBSM's "control" of those companies under the above definition.

BCBSM is the sole shareholder of the Accident Fund. (Plaintiff's Appx, 15a, ¶ 8). As such, it owns all shares of the Accident Fund's voting securities. The Accident Fund, in turn, owns all voting shares of United Wisconsin, Third Coast, and CWI. (Plaintiff's Appx, 16a, ¶¶ 16-18). Under this ownership structure, "through the ownership of voting securities," BCBSM possesses the right to directly acquire "the power to direct or cause the direction" of the Accident Fund's management policies. This is clearly "control," as defined by MCL 500.115(b). In fact, by owning more than 10% of the Accident Fund's voting securities, BCBSM's control "is presumed" to exist. *Id.* Indeed, BCBSM's Board of Directors' August 4, 2007 approval of the Accident Fund's acquisition of CWI undeniably demonstrates that "control" exists. (*Id*, ¶ 19). BCBSM's control over all three insurance companies is clearly admitted in its 2009 and 2010 consolidated financial statements, wherein BCBSM lists all three insurance companies as "purchased" subsidiaries.[3] And by "controlling" the Accident Fund, which in turn owns 100% of each of the insurance companies, BCBSM "indirectly, owns, controls, holds with the power to vote…10% or more of the voting securities" of United Wisconsin, CWI, and Third Coast. MCL 500.115(b). As noted *supra*, the trial court already concluded that BCBSM "indirectly owns" the companies, and the Court of Appeals was in error when it concluded that BCBSM did not "otherwise acquire" the companies. Indeed, it seems odd that the Court of Appeals could conclude that BCBSM did not "otherwise acquire" an interest in any of the insurers under a scenario in which BCBSM clearly "controls" the insurers under PA 350's definition of "control." BCBSM similarly avoids this issue, merely making the blanket statement that Section 207(1)(o) does not apply because BCBSM did not "directly acquire," any of the foreign insurers. (BCBSM Brief, p 20). But as already explained, there is no "direct acquisition" requirement in Section 207—instead, Section 207 employs the standard of "otherwise" acquiring an interest. It seems obvious that if a company "controls" another company, it has somehow "acquired" an interest in that company. But BCBSM never even attempts to address this issue. It simply claims (without

[3] See Exhibit B. Again, the Coalition recognizes that this exhibit is not part of the record. But again, it must be noted that this is a public document wherein BCBSM admits control over the foreign insurance companies.

support) that Section 207(1)(o)'s prohibition on controlling foreign insurers only applies in instances where BCBSM directly purchases the foreign insurers. What BCBSM fails to recognize is that by "indirectly owning" these companies, BCBSM "controls" the insurance companies for purposes of Section 207(1)(o)(iv)'s prohibition on controlling foreign insurance companies. As a result, BCBSM's arguments must be rejected and the Court of Appeals must be reversed.

iii. As workers' compensation insurers, the companies otherwise acquired by, and now controlled by BCBSM are not disability insurers.

Because BCBSM "controls" the three insurance companies under PA 350's plain language, BCBSM violated Section 207(o)(iv) unless the insurance companies are "only authorized to sell disability insurance." MCL 550.1207(1)(o)(iv). Importantly, workers' compensation insurance, which all three acquired companies write, is not a form of disability insurance. Instead, it is a form of "casualty insurance." See MCL 600.624(1)(b). No party to this case has disputed this fact. As a result, none of the acquired insurance companies are "only authorized to sell disability insurance" as required by Section 207(1)(o)(iv). This results in an **explicit** violation of Section 207.

In summary, Section 207(1)(o)(iv) prevents BCBSM from investing in or "otherwise acquiring" foreign insurance companies if the investment or acquisition results in BCBSM "owning or controlling" an insurer that is authorized to sell more than disability insurance. BCBSM "otherwise acquired" the insurers through its subsidiary. Neither the Court of Appeals' holding nor BCBSM's arguments give any meaning to the phrase "otherwise acquire." In this instance, BCBSM gave money to the Accident Fund to acquire a company, and "approved" the acquisition. Under any understanding of the phrase "otherwise acquire," these actions **must** constitute an acquisition. And the acquisitions resulted in BCBSM having "control" of the insurance companies, as defined by Section 207's plain language. The Court of Appeals failed to even to examine PA 350's definition of "control," and BCBSM attempts to use a legal sleight of hand to avoid the issue. Once examined, there is no question that BCBSM serves as a holding company that controls all three foreign insurers. And because each company writes workers' compensation insurance, they are authorized to sell more than disability insurance. BCBSM, therefore, violated Section 207 each time the Accident Fund acquired one of the companies, and this Court should reverse the Court of Appeals.

CONCLUSION

BCBSM can only undertake those actions permitted by PA 350. Recognizing that BCBSM possesses certain financial advantages over for-profit insurers, the Legislature placed clear restrictions on BCBSM owning, controlling, or subsidizing other insurers. BCBSM violated those restrictions when it acquired several workers' compensation insurers through the Accident Fund. Because a review of PA 350 clearly shows that BCBSM violated its restrictions, the Court of Appeals was in error to dismiss the Attorney General's claims. For those reasons, the Coalition urges this Court to reverse the Court of Appeals' decision. It is clear that BCBSM violated PA 350 as a matter of law.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By:______________________________

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Dated: January 5, 2012

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ANNUAL STATEMENT

For the Year Ended December 31, 2010

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BLUE CROSS BLUE SHIELD OF MICHIGAN

NAIC Group Code.....572, 572 (Current Period) (Prior Period)	NAIC Company Code..... 54291	Employer's ID Number..... 38-2069753
Organized under the Laws of Michigan	State of Domicile or Port of Entry Michigan	Country of Domicile US
Licensed as Business Type.....Hospital, Medical & Dental Service or Indemnity	Is HMO Federally Qualified? Yes [ ] No [X]	
Incorporated/Organized..... February 1, 1975	Commenced Business..... January 1, 1975	

Statutory Home Office	600 Lafayette East..... Detroit ..... MI .... 48226 *(Street and Number) (City or Town, State and Zip Code)*	
Main Administrative Office	600 Lafayette East..... Detroit ..... MI ..... 48226 *(Street and Number) (City or Town, State and Zip Code)*	313-225-9000 *(Area Code) (Telephone Number)*
Mail Address	600 Lafayette East..... Detroit ..... MI ..... 48226 *(Street and Number or P. O. Box) (City or Town, State and Zip Code)*	
Primary Location of Books and Records	600 Lafayette East..... Detroit ..... MI ..... 48226 *(Street and Number) (City or Town, State and Zip Code)*	313-225-9000 *(Area Code) (Telephone Number)*
Internet Website Address	http://bcbsm.com/	
Statutory Statement Contact	Kenneth A. Bluhm *(Name)*	313-225-9095 *(Area Code) (Telephone Number) (Extension)*
	kbluhm@bcbsm.com *(E-Mail Address)*	313-983-2358 *(Fax Number)*

OFFICERS

Name	Title	Name	Title
1. DANIEL J. LOEPP	President and CEO	2. MARK R. BARTLETT	Executive Vice President and CFO
3. CAROLYNN WALTON	Vice President and Treasurer	4. TRICIA A. KEITH	VP & Corporate Secretary

OTHER

ELIZABETH R. HAAR	Senior Vice President	ROBERT MILEWSKI	Senior Vice President
JOSEPH H. HOHNER	Executive Vice President	THOMAS L. SIMMER	Senior Vice President
SUSAN L. BARKELL	Senior Vice President	KENNETH R. DALLAFIOR	Senior Vice President
DARRELL E. MIDDLETON	Executive Vice President	LYNDA M. ROSSI #	Senior Vice President

DIRECTORS OR TRUSTEES

JAMES G. AGEE	JON E. BARFIELD	WILLIAM H. BLACK	EDWARD J. CANFIELD DO
DIANE R. GODDEERIS RN,BSN	TERRY W. BURNS	BRIAN M. CONNOLLY	PATRICK J. DEVLIN
MARK T. GAFFNEY	SARAH W. DOYLE	THOMAS J. HADRYCH	JOHN M. HAMILTON
GERALD H. ACKER	WALLACE D. RILEY	SPENCER C. JOHNSON	GARY H. TORGOW
MELVIN L. LARSEN	DANIEL J. LOEPP	F. REMINGTON SPRAGUE MD	GARY J. MCINERNEY
LIVIO MEZZA	EDWARD G. JANKOWSKI MD	ROBERT A. PATZER	RENEE C. AXT
CALVIN T. RAPSON	JAMES W. RICHARDS RPH	IRIS K. SALTERS	JAMES U. SETTLES JR
EDWIN D. SECORD III DDS,MS	GREGORY A. SUDDERTH	S. MARTIN TAYLOR	EMERY I. KLEIN
JEAN L. ROSE	JOHN VANDERMOLEN		

State of.......Michigan
County of.....Wayne

The officers of this reporting entity being duly sworn, each depose and say that they are the described officers of said reporting entity, and that on the reporting period stated above, all of the herein described assets were the absolute property of the said reporting entity, free and clear from any liens or claims thereon, except as herein stated, and that this statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to, is a full and true statement of all the assets and liabilities and of the condition and affairs of the said reporting entity as of the reporting period stated above, and of its income and deductions therefrom for the period ended, and have been completed in accordance with the NAIC *Annual Statement Instructions* and *Accounting Practices and Procedures* manual except to the extent that: (1) state law may differ; or, (2) that state rules or regulations require differences in reporting not related to accounting practices and procedures, according to the best of their information, knowledge and belief, respectively. Furthermore, the scope of this attestation by the described officers also includes the related corresponding electronic filing with the NAIC, when required, that is an exact copy of the enclosed statement (except for formatting differences due to electronic filing). The electronic filing may be requested by various regulators in lieu of or in addition to the enclosed statement.

(Signature)	(Signature)	(Signature)
DANIEL J. LOEPP	MARK R. BARTLETT	CAROLYNN WALTON
1. (Printed Name)	2. (Printed Name)	3. (Printed Name)
President and CEO	Executive Vice President and CFO	Vice President and Treasurer
(Title)	(Title)	(Title)

Subscribed and sworn to before me
This ________ day of ________________

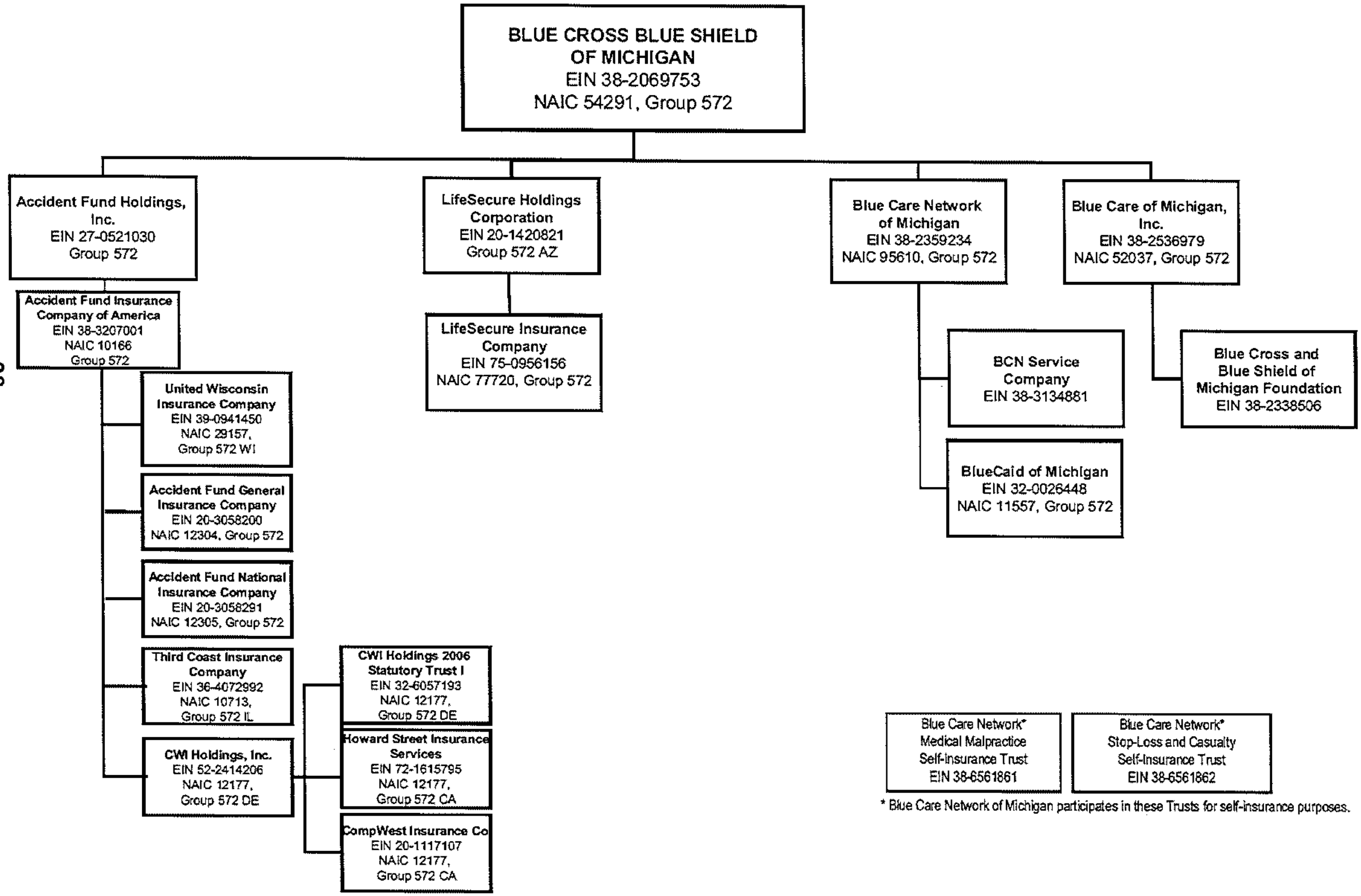
a. Is this an original filing? Yes [X] No [ ]
b. If no
1. State the amendment number
2. Date filed
3. Number of pages attached

A

Blue Cross Blue Shield of Michigan

A nonprofit corporation and independent licensee of the Blue Cross and Blue Shield Association

SUBSIDIARY & AFFILIATE ORGANIZATION CHART



* Blue Care Network of Michigan participates in these Trusts for self-insurance purposes.

All entities that do not reflect a particular state abbreviation are domiciled in Michigan.

Blue Cross
Blue Shield
of Michigan

A nonprofit corporation and independent licensee
of the Blue Cross and Blue Shield Association

Blue Cross Blue Shield of Michigan and Subsidaries

VALUE DEFINED

Consolidated Financial Statements as of and for the Years Ended December 31, 2010 and 2009, and Independent Auditors' Report

B

Receivables are net of allowances for potentially uncollectible amounts of $11.5 and $18.1 as of December 31, 2010 and 2009, respectively.

7. PROPERTY AND EQUIPMENT

Property and equipment at December 31, 2010 and 2009, consist of the following:

	2010	2009
Land and buildings	$ 477.7	$ 457.1
Equipment	245.9	240.6
Software	591.6	546.9
Total	1,315.2	1,244.6
Less accumulated depreciation	(687.3)	(646.9)
Net property and equipment	$ 627.9	$ 597.7

Depreciation and amortization expense was $84.7 and $84.8 for the years ended December 31, 2010 and 2009, respectively.

In December 2010, the Corporation has entered into a long-term lease to occupy space in the GM Renaissance Center in downtown Detroit, into which it plans to move its personnel currently located at the Corporation's service center in Southfield, Michigan. Consistent with the provisions of ASC 360, *Property, Plant and Equipment*, the Corporation intends to dispose of the Southfield Metro property and accordingly, has ceased depreciation and changed the property status to "Held for Sale." As a result, the Corporation wrote the property down to its estimated fair market value of $11.4 and recorded an impairment loss of $31.9 for the year ended December 31, 2010. In 2010 and 2009, the Corporation recorded a $4.5 and $10.0, respectively, asset impairment charge for capitalized software costs that will not be placed in service. The impairments are recorded in operating expense line of consolidated statements of operations.

The Corporation's total property value recorded at fair value is $11.8. The fair value is determined by use of appraisals. The Corporation categorizes the assets as level 3 – unobservable inputs for fair value measurement purpose.

8. GOODWILL

Acquisitions are accounted for under the purchase method of accounting and, accordingly, the purchase price is allocated to assets acquired and liabilities assumed based on their estimated fair values.

The changes in the carrying amount of goodwill from the purchase of subsidiaries at December 31, 2010 and 2009 consists of the following:

	Accident Fund	United Heartland	Comp West	MHIC	M-CARE	DenteMax	Total
Balance, January 1, 2009							
Goodwill	$ 125.0	$ 24.7	$ 35.8	$ 17.0	$ 90.7	$ 1.4	$ 294.6
Accumulated amortization	(58.3)	-	-	-	(18.2)	-	(76.5)
Accumulated impairment losses	-	-	-	-	-	-	-
Net goodwill	66.7	24.7	35.8	17.0	72.5	1.4	218.1
Amortization	-	-	-	-	(9.0)	-	(9.0)
Sale of Subsidiary	-	-	-	-	-	(1.4)	(1.4)
Balance, December 31, 2009							
Goodwill	125.0	24.7	35.8	17.0	90.7	-	293.2
Accumulated amortization	(58.3)	-	-	-	(27.2)	-	(85.5)
Accumulated impairment losses	-	-	-	-	-	-	-
Net goodwill	66.7	24.7	35.8	17.0	63.5	-	207.7
Impairment losses	-	-	(35.8)	-	-	-	(35.8)
Balance, December 31, 2010							
Goodwill	125.0	24.7	35.8	17.0	90.7	-	293.2
Accumulated amortization	(58.3)	-		-	(27.2)	-	(85.5)
Accumulated impairment losses	-	-	(35.8)	-	-	-	(35.8)
Net goodwill	$ 66.7	$ 24.7	$ -	$ 17.0	$ 63.5	$ -	$ 171.9

The Corporation completed its annual impairment test for the year-ended December 31, 2009 and determined no impairment was necessary. During 2010, because of current workers compensation market conditions in California and uncertainty about the duration of such conditions, the Corporation determined during its annual impairment tests that the carrying value of the goodwill related to the acquisition of CompWest exceeded its fair value. As a result, the Corporation performed an impairment analysis using an income based approach and recognized an impairment loss of $35.8 in 2010 which is included in operating expenses in consolidated statement of operations.

9. OTHER ASSETS

Other assets at December 31, 2010 and 2009, consist of the following:

	2010	2009
Invested assets in partnerships and joint ventures	$ 54.9	$ 44.4
Investment in Federal Home Loan Bank (FHLBI)	66.7	69.1
Net intangible assets	50.7	60.3
Deferred policy acquisition costs	55.2	56.5
Prepaid assets	17.1	21.6
Investment in NASCO	16.7	16.4
Other	20.4	20.4
Total	$ 281.7	$ 288.7